

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HOWARD EALY,

Plaintiff,

vs.

CV F 02 5897 AWI WMW P

_____ FINDINGS AND RECOMMENDATION

DR. ZOLLER, et al.,

Defendants.

Plaintiff is a former state prisoner proceeding pro se. Pending before the court is defendants's motion to dismiss.

On December 30, 2005, defendants filed and served their motion to dismiss plaintiff's third amended complaint. The motion was served on plaintiff at his address of record. On January 18, 2006, defendants filed and served a Notice re Pro Se Inmate's Obligations. Plaintiff has failed to file opposition to the motion.

Local Rule 78-230(m) provides that the failure to oppose a motion "may be deemed a waiver of any opposition to the granting of the motion..." The court will deem plaintiff's failure to oppose defendant's motion to dismiss a waiver, and recommend that the motion be granted on that basis.

Failure to follow a district court's local rules is a proper grounds for dismissal. U.S. v. Warren, 601 F.2d 471, 474 (9th Cir. 1979). Thus, a court may dismiss an action for plaintiff's

1 failure to oppose a motion to dismiss, where the applicable local rule determines that failure to
2 oppose a motion will be deemed a waiver of opposition. See Ghazali v. Moran, 46 F.3d 52 (9th
3 Cir. 1995), cert. denied 116 S.Ct. 119 (1995) (dismissal upheld even where plaintiff contends he
4 did not receive motion to dismiss, where plaintiff had adequate notice, pursuant to F.R.C.P. 5(b),
5 and time to file opposition); cf. Marshall v. Gates, No. 93-5022, slip op. 99, 105-06 (9th Cir. Jan.
6 4, 1995); Henry v. Gill Industries, Inc., 983 F.2d 943, 949-50 (9th Cir. 1993) (motion for
7 summary judgment cannot be granted simply as a sanction for a local rules violation, without an
8 appropriate exercise of discretion).

9 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed
10 without prejudice for failure to prosecute.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within
13 thirty days after being served with these findings and recommendations, any party may file
14 written objections with the court and serve a copy on all parties. Such a document should be
15 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
16 objections shall be served and filed within ten days after service of the objections. The parties
17 are advised that failure to file objections within the specified time waives all objections to the
18 judge's findings of fact. See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). Failure to file
19 objections within the specified time may waive the right to appeal the District Court's order.
20 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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24 IT IS SO ORDERED.

25 **Dated: April 5, 2006**
mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE